Court No.3

Criminal Misc. Application No. 44/2003

Mahanand Vishwash .....Applicant.

Versus

Family Court U.S. Nagar and others .....Respondents

Hon'ble Irshad Hussain, J.

Heard Sri S.K.Mandal learned counsel for the applicant. None appear for the respondents.

Perused the record. On a petition preferred under section 20 of the Hindu Adoption and Maintenance Act, maintenance was granted to respondent Nos. 2 and 3 per judgment and order dated 21-9-2001 whereby each of the respondents were awarded maintenance at the rate of Rs. 800/- per month. The judgment was exparte. It is averred in the petition that an application for setting aside the exparte decree was preferred under Order 9 Rule 13 C.P.C. which is pending disposal with the Principal Judge, Family Court, Nainital. Meanwhile the respondent Nos. 2 and 3 filed a petition No. 261/2002 to have the above exparte order executed against the petitioner. The learned Principal Judge Family Court, Udham Singh Nagar took cognizance of the petition and passed the impugned order dated 27-2-2003 without taking into account that the main petition was disposed of by the Principal Judge, Family Court, Nainital. In the face of the circumstances of the case the question of jurisdiction was involved and the learned Principal Judge Family Court Udham Singh Nagar did not enter into discussion to decide this controversy and straight way went on to pass the impugned order directing attachment of the salary of the petitioner. It is also significant that the petition under Order 9 rule 13 C.P.C. is pending disposal with the competent Court i.e. Principal Judge Family Court, Nainital which has the jurisdiction in view of the fact that the main petition under section 20 Hindu Adoption and Maintenact, Act was filed there and

exparte decree was passed thereon. Considering these broad features of the case the impugned order dated 27-2-2003 can not be maintained as such.

The petition is accordingly allowed and the impugned order dated 27-2-2003 is set aside. The learned Principal Judge Family Court Udham Singh Nagar shall decide the petition afresh presented before him firstly by deciding the issue of jurisdiction and if it is held that jurisdiction lie with the principal Judge Family Court, Nainital the petition shall be returned to the respondent Nos. 2 and 3 for presentation before the competent court.

It is also directed that the Principal Judge Family Court, Nainital shall meanwhile expedite the disposal of petition pending under Order 9 Rule 13 C.P.C., within a period of two months from the date of the receipt of the copy of the order. The petition is finally disposed of.

(Irshad Hussain, J.)

Dated 15-9-2003

ISB